

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 172 - SB 1461**

February 20, 2023

**SUMMARY OF BILL:** Enacts the *Tennessee Medical Cannabis Act* (Act), which legalizes and decriminalizes, licenses and regulates the possession, consumption, cultivation, processing, purchase, transportation, and sale of cannabis, including the extraction of any part of the plant, and every compound, derivative, mixture, product, or preparation of the plant for any qualifying patient who has been assessed by a medical care practitioner as having a debilitating medical condition and has successfully applied for a registry identification card (card). Additionally, allows the sale of cannabis to designated caregivers and nonresident cardholders. Requires qualifying patients to pay a card application fee at issuance and a renewal fee annually thereafter.

Requires the Department of Health (DOH) to promulgate rules to effectuate this Act no later than January 1, 2024 and such rules must include initial application fees for cards and the initial certificate fees for medical cannabis establishments (MCEs), which include by definition:

- Cultivation facilities;
- Cannabis testing facilities;
- Cannabis product manufacturing facilities;
- Dispensaries; or
- Other medical cannabis entities certified by DOH.

Prohibits application fees for MCEs to exceed \$5,000. Requires that initial application and renewal fees, beginning on January 1, 2025, be increased annually to reflect inflation and be rounded to the nearest \$10. Requires that total fees collected from cards and certificates generate revenues sufficient to offset all expenses incurred by the DOH in implementing and administering this Act. Requires that fees charged to qualifying patients, nonresident cardholders, and designated caregivers, in aggregate, be no greater than the costs of processing applications and issuing cards.

Requires that such rules consider petitions from the public to add serious medical conditions or treatments to the list of debilitating medical conditions, including public notice and opportunities to comment on public hearings of such petitions.

Requires all principal officers, board members, agents, volunteers, and employees of an MCE to pass a criminal history background check.

Requires DOH to issue initial cards to qualifying patients no later than May 1, 2024. Requires that DOH establish a secure phone or web-based verification system no later than May 1, 2024, which must allow law enforcement personnel and medical cannabis establishments the ability to

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enter a registry identification number to determine whether such number corresponds with a current valid card.

Establishes that, in computing net earnings for MCEs, there is allowed a deduction from state taxes equal to all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business as an MCE, including reasonable allowance for salaries or other compensation for personal services actually rendered.

For purposes of promulgating rules and forms, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2024.

### **FISCAL IMPACT:**

**Increase State Revenue – \$1,715,700/FY23-24/General Fund  
\$16,293,500/FY24-25/General Fund  
\$23,308,700/FY25-26/General Fund  
\$30,474,700/FY26-27 and Subsequent Years/General Fund**

**\$300/FY23-24/Secretary of State  
\$200/FY24-25 and Subsequent Years/Secretary of State**

**\$18,600/FY23-24/TBI  
\$9,300/FY24-25 and Subsequent Years/TBI**

**Increase State Expenditures –  
\$1,495,100/FY23-24/General Fund  
\$1,4673,500/FY24-25 and Subsequent Years/General Fund**

**\$12,000/FY23-24/TBI  
\$6,000/FY24-25 and Subsequent Years/TBI**

**Decrease State Expenditures - \$71,100/FY23-24/Incarceration  
\$143,500/FY24-25/Incarceration  
\$144,900/FY25-26 and Subsequent Years/Incarceration**

**Increase Local Revenue - \$5,108,400/FY24-25  
\$7,662,500/FY25-26  
\$10,662,500/FY26-27 and Subsequent Years**

**Decrease Local Expenditures - \$10,525,800/FY23-24  
\$21,051,600/FY24-25 and Subsequent Years**

**Other Fiscal Impact – To the extent that Medical Cannabis Establishments will claim tax deductions equal to all ordinary and necessary expenses incurred, and**

reduce state revenue is unknown and cannot be determined with reasonable certainty.

**The Department of Health will need additional resources including, but not limited to, employing additional staff. The extent and timing of the needed resources will be dependent on the promulgation of rules and the growth of the program and cannot be reasonably quantified at this time. Any additional expenditures incurred will be covered through the revenue collected in the General Fund. Assumptions:**

*Licensing Revenue MCEs:*

- It is assumed sales of medical cannabis will begin on July 1, 2024.
- This legislation does not specify when initial MCE certificates will be issued, but for purposes of assumption, it is assumed such initial certificates will begin issuance on January 1, 2024. in FY23-24.
- It is assumed that any MCE applicant will seek a certificate as soon as such becomes available, or on January 1, 2024, in order to establish a solid footing in the market. It is assumed that the first 100 MCEs will apply and receive a certificate between January 1, 2024 and June 30, 2024.
- This legislation requires that total fees collected from cards and certificates must generate revenues sufficient to offset all expenses incurred by DOH for implementation and administering this Act.
- It is assumed that each MCE certificate will cost approximately \$1,000 in FY23-24 to offset the Act as there will only be a half-year fiscal impact.
- MCE certificates are expected to cost \$4,000 in FY24-25, due to greater certifications; however, the cost of such certificate must begin to reflect inflation beginning January 1, 2025 and be rounded to the nearest \$10. For purposes of this fiscal note, the cost of each certificate is assumed to remain \$4,000 into perpetuity.
- The fees generated from card application and renewal fees must directly offset the processing and issuing of cards, which will net out any such expenses and revenue.
- There will be an increase in state revenue to the General Fund in FY23-24 of \$500,000 (100 MCEs x \$5,000).
- It is assumed that the following fiscal year will increase certifications by 50 percent, as there will be a steep initial application for certification, followed by a moderate increase in FY24-25 and subsequent years.
- An increase in state revenue to the General Fund in FY24-25 and subsequent years of \$600,000 (150 MCEs x \$4,000).

*Business Charters:*

- All MCEs will be required to file a business charter with the Secretary of State (SOS).
- It is assumed that one business charter will effectively cover all branches owned under any MCE certificate.
- The business charter fee is a one-time cost of \$100.
- It is assumed that in FY23-24, there will be 100 MCEs which will file business charters with the SOS.

- For purposes of this fiscal analysis, it is assumed that in FY24-25 and subsequent years, as some businesses close and others replace them, there will be approximately 50 new business charters filed with the SOS annually.
- The resulting increase in state revenue is estimated to be \$10,000 in FY23-24 ( $100 \times \$100$ ) and \$5,000 in FY24-25 and subsequent years ( $50 \times \$100$ ).
- Revenue from charter fees is allocated 97 percent to the General Fund, and 3 percent to SOS. The increase in state revenue to the General Fund is estimated to be \$9,700 in FY23-24 ( $\$10,000 \times 97\%$ ) and \$4,850 in FY24-25 and subsequent years ( $\$5,000 \times 97\%$ ). The increase in state revenue to the Secretary of State's Office is estimated to be \$300 in FY23-24 ( $\$10,000 \times 3\%$ ) and \$150 in FY24-25 and subsequent years ( $\$5,000 \times 3\%$ ).

*Background Checks:*

- Pursuant to Tenn. Code Ann. § 68-7-217(a) of the Act, each application for an MCE license must include a completed background check for each person who is proposed to be a principal officer, board member, agent, volunteer or employee of a proposed MCE.
- The Tennessee Bureau of Investigation (TBI) charges a fee of \$37.15 to collect one sample of fingerprints and perform one criminal background check.
- Of the \$37.15, \$13.25 is forwarded to the Federal Bureau of Investigation to run a check, \$10.65 is forwarded to the vendor that collects the fingerprints, and \$13.25 is retained by the TBI to run a check through their system.
- For the purposes of this analysis, it is assumed there will be approximately five individuals per MCE.
- In FY23-24, TBI will realize \$18,575 ( $100 \text{ licenses} \times 5 \text{ individuals} \times \$37.15$ ) in revenue and expenditures of \$11,950 [ $100 \text{ licenses} \times 5 \text{ individuals} \times (\$13.25 + \$10.65)$ ].
- In FY24-25 and subsequent years, TBI will realize \$9,288 ( $50 \text{ licenses} \times 5 \text{ individuals} \times \$37.15$ ) in revenue and expenditures of \$5,975 [ $50 \text{ licenses} \times 5 \text{ individuals} \times (\$13.25 + \$10.65)$ ].

*Qualifying patients, Designated Caregivers, and Nonresident Cardholders:*

- In determining the number of individuals who will participate in this program, the DOH was contacted to determine the number of individuals who will qualify for a registry identification card due to having a qualifying medical condition, as defined in the Act.
- Based on previous information provided by DOH, at least 1,200,000 individuals residing in Tennessee have a qualifying medical condition which would entitle such qualifying patients to seek a registry identification card.
- Tennessee will grant reciprocity to nonresident cardholders who have a valid, functional equivalent to the card established by this Act.
- It is assumed that approximately 0.5 percent of the total estimated population of Tennesseans with qualifying medical conditions, or 6,000 individuals ( $1,200,000 \times 0.5\%$ ) will be eligible non-resident cardholders and purchase medical marijuana legally in Tennessee.
- In total, approximately 1,206,000 individuals will be eligible to purchase cannabis in Tennessee ( $1,200,000 + 6,000$ ).

- After Colorado passed Amendment 20 in 2000, those with certain qualifying medical conditions were able, beginning July 1, 2001, to possess up to two ounces of a usable form of marijuana and cultivate not more than six marijuana plants.
- In October 2009, federal resources to prosecute medical marijuana patients and caregivers who were in “clear and unambiguous” compliance with state law were decreased, effectively leading to a drastic increase in the number of dispensaries in the state, and thus, the number of registrants also increased drastically.
- The following shows the number of registrants (2009-2013) in Colorado as of January 31 of each year:
  - 2009: 5,051
  - 2010: 53,038
  - 2011: 118,895s
  - 2012: 85,124
  - 2013: 108,056
- Due to this legislation’s immediate adoption of regulated MCEs, the following figures estimate the number of individuals per fiscal year who either hold cards or are nonresident cardholders and thus, will be eligible to purchase medical cannabis in Tennessee:
  - FY23-24: 60,300 individuals (1,206,000 x 5%);
  - FY24-25: 90,450 individuals (1,206,000 x 7.5%); and
  - FY25-26 and subsequent years: 120,600 individuals (1,206,000 x 10%).
- According to the Colorado Department of Revenue, retail sales of medical cannabis at the close of FY12-13 (12<sup>th</sup> program year), totaled \$328,646,922.
- As of June 30, 2013 (12<sup>th</sup> program year), the registry contained approximately 106,817 users possessing valid cards.
- The annual revenue realized per average card holder was \$3,077 (\$328,646,922 / 106,817 ID holders).

### ***Revenue:***

#### ***FY24-25 Tax Revenue:***

- It is assumed that cannabis sales will effectively begin on July 1, 2024.
- Retail sales of medical cannabis in FY24-25 will be \$185,543,100 (60,300 x \$3,077).
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent. The net profit on which excise tax would be paid is \$27,831,465 (\$185,543,100 x 15%).
- All MCEs will pay the current excise tax rate of 6.5 percent.
- The state excise tax rate is 6.5 percent. An increase in state revenue attributable to excise tax collections will be \$1,809,045 to the General Fund (\$27,831,465 x 6.5%).
- Net worth of these companies is estimated to be equivalent to annual sales (\$185,543,100). The franchise tax rate is 0.25 percent per \$100 of value, so the increase in state revenue attributable to franchise tax collections will be \$4,639 to the General Fund [(\$185,543,100 / \$100) x 0.25%].
- This legislation does not establish a special sales or excise tax specific to sales of medical cannabis; therefore, it is assumed that the state and local sales and use tax will be applicable to medical cannabis sales.

- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- The increase in state sales tax collections is estimated to be \$12,518,240  $[(\$185,543,100 \times 7\%) - (\$185,543,100 \times 7\% \times 3.617\%)]$  in FY24-25.
- The increase in local sales tax collections is estimated to be \$5,108,355  $[(\$185,543,100 \times 2.5\%) + (\$185,543,100 \times 7\% \times 3.617\%)]$  in FY24-25.
- A total increase in General Fund revenue in FY24-25 of \$14,331,924  $(\$1,809,045 + \$4,639 + \$12,518,240)$ .

*FY25-26 Tax Revenue:*

- Retail sales of medical cannabis in FY25-26 will be \$278,314,650  $(90,450 \times \$3,077)$ .
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent; the net profit on which excise tax would be paid is \$41,747,198  $(\$278,314,650 \times 15\%)$ . The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections will be \$2,713,568 to the General Fund  $(\$41,747,198 \times 6.5\%)$ .
- Net worth of these companies is estimated to be equivalent to annual sales  $(\$278,314,650)$ . The franchise tax rate is 0.25 percent per \$100 of value, so the increase in state revenue attributable to franchise tax collections will be \$6,958 to the General Fund  $[(\$278,314,650 / \$100) \times 0.25\%]$ .
- The increase in state sales tax collections is estimated to be \$18,777,361  $[(\$278,314,650 \times 7\%) - (\$278,314,650 \times 7\% \times 3.617\%)]$  in FY25-26.
- The increase in local sales tax collections is estimated to be \$7,662,531  $[(\$278,314,650 \times 2.5\%) + (\$278,314,650 \times 7\% \times 3.617\%)]$  in FY25-26.
- A total increase in General Fund revenue in FY25-26 of \$21,497,887  $(\$2,713,568 + \$6,958 + \$18,777,361)$ .

*FY26-27 and Subsequent Years Tax Revenue:*

- Retail sales of medical cannabis in FY26-27 and subsequent years will exceed \$371,086,200  $(120,600 \times \$3,077)$ .
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent; the net profit on which excise tax would be paid is \$55,662,930  $(\$371,086,200 \times 15\%)$ . The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections of \$3,618,090 to the General Fund  $(\$55,662,930 \times 6.5\%)$ .
- Net worth of these companies is estimated to be equivalent to annual sales  $(\$371,086,200)$ . The franchise tax rate is 0.25 percent per \$100 of value, so the increase in state revenue attributable to franchise tax collections will exceed \$9,277  $[(\$371,086,200 / \$100) \times 0.25\%]$ .
- The increase in state sales tax collections is estimated to be \$25,036,481  $[(\$371,086,200 \times 7\%) - (\$371,086,200 \times 7\% \times 3.617\%)]$  in FY26-27.
- The increase in local sales tax collections is estimated to be \$10,216,708  $[(\$371,086,200 \times 2.5\%) + (\$371,086,200 \times 7\% \times 3.617\%)]$  in FY26-27.

- A total increase in General Fund revenue in FY25-26 of \$28,663,848 (\$3,618,090 + \$9,277 + \$25,036,481).

*Revenue – Medical Cannabis Cards:*

- All qualifying patients who register with the Medical Cannabis Commission (Commission) must pay a fee for the issuance of a medical cannabis card.
- Such cards expire annually from the date of issuance and can be renewed after payment of the renewal fee.
- This legislation requires DOH to issue initial cards to qualifying patients no later than May 1, 2024.
- It is assumed that the following number of medical cannabis cards will be issued per fiscal year:
  - FY23-24: 60,300 cards;
  - FY24-25: 90,450 cards; and
  - FY25-26 and subsequent years: Exceeds 120,600 cards.
- It is assumed that in FY25-26 and subsequent years, the number of issued cards will stay constant into perpetuity; however, new cardholders will replace those who have been issued a card, but decide not to renew or no longer have a qualifying condition, as defined by the legislation.
- This legislation requires that fees charged to qualifying patients, nonresident cardholders, and designated caregivers, in aggregate, be no greater than the costs of processing applications and issuing cards.
- The cost of processing applications and issuing cards is unknown at this time, but it is assumed that in outlying years that license fees will be fixed to not exceed the costs of processing applications and issuing cards.
- All fee revenue is required to be allocated to the General Fund.
- For purposes of assumption, it is assumed that the following will be average costs of issuance of identification cards per fiscal year:
  - FY23-24: \$20;
  - FY24-25: \$15;
  - FY25-26 and subsequent years: \$10.
- General Fund revenue by fiscal year:
  - FY23-24: \$1,206,000 (60,300 initial cards x \$20);
  - FY24-25: \$1,356,750 (90,450 total cards issued x \$15).
  - FY25-26 and subsequent years: \$1,206,000 (120,600 cards issued x \$10).
- For purposes of this fiscal note, it is assumed that this revenue stream will remain constant into perpetuity; however, the Commission is authorized to adjust such fee amount and subsequently, this revenue stream will differ in actuality.

*Expenditures:*

*Department of Revenue (DOR):*

- The DOR will require one additional Tax Auditor-3 position to audit tax returns submitted from MCEs.
- It is assumed that this new position will be filled on July 1, 2023.

- There will be a one-time increase in state expenditures in FY23-24 of \$1,200 for computer.
- There will be a recurring increase in state expenditures of \$107,865 (\$85,704 salary + \$21,531 + \$600 supplies) in FY23-24 and subsequent years.
- A total increase in state expenditures of \$109,065 (\$107,865 + \$1,200) in FY23-24.
- There will be a recurring increase in state expenditures of \$107,865 in FY24-25 and subsequent years.

*Department of Health:*

- This legislation requires that any costs incurred by DOH in the administration of this medical cannabis program be offset by fees received from MCE certificate issuances.
- It is assumed that the Commission will hire one project director, one accountant-3 position, three agricultural enforcement officers, one administrative assistant-3, and nine food and dairy inspectors.
- It is assumed that these new DOH positions will be filled around July 1, 2023 to enable the program to be properly prepared.
- There will be a one-time increase in state expenditures in FY23-24 of \$20,400 for computers.
- There will be an increase in state expenditures of \$1,386,084 (\$1,040,484 salaries + \$297,398 benefits + \$27,800 supplies + travel + \$20,400 computers) in FY23-24.
- There will be a total recurring increase in state expenditures of \$1,365,684 (\$1,040,484 salaries + \$297,398 benefits + \$27,800 supplies + travel) in FY24-25 and subsequent years.

*Impact on Incarceration/State and Local Court Costs:*

- The proposed legislation will reduce convictions for simple possession involving an amount of marijuana less than one-half ounce.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 2,411 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 in each of the last five years.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 24,110 convictions (2,411 / 10%) per year for Class A misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- It is assumed that an individual convicted of a Class A misdemeanor offense will spend an average of 15 days in a local jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- The proposed legislation will lead to a recurring mandatory decrease in local incarceration expenditures estimated to be \$21,051,647 (\$58.21 x 24,110 offenders x 15 days).
- This impact will take effect January 1, 2024; therefore, the first-year impact in FY23-24 will only be half of a full-year impact, or \$10,525,824 (\$21,051,647 x 50%).
- A recurring mandatory decrease in local incarceration expenditures in FY24-25 and subsequent years of \$21,051,647.



- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver a Schedule VI controlled substance classified as marijuana containing not less than one half ounce nor more than ten pounds, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish), containing not more than two pounds of hashish is a Class E felony offense.
- Based on information provided by the Department of Correction (DOC), there has been an average of 137.8 admissions in each of the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-417(g).
- However, these admissions include a Schedule VI controlled substance classified as marijuana containing up to ten pounds and a Schedule VI controlled substance classified as hashish containing up to two pounds.
- It is assumed that 15 percent, or 20.67 (137.8 x 15%) of these admissions involved between one half ounce and one ounce of a Schedule VI controlled substance classified as marijuana.
- After adjusting for pre-trial jail credits, the average time served for a Class E felony offense under 39- 17-417(g) is 0.37 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The proposed legislation will result in 20.67 admissions annually serving 0.37 less years incarcerated.
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, the decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ 71,050*	FY23-24
\$ 143,500	FY24-25
\$ 144,900	FY25-26

\*1/2-year impact

- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.

- All calculations used in completion of this fiscal note are available upon request.

***Total Impacts to the General Fund, the Secretary of State's Office, TBI, Incarceration, and Local Government:***

*General Fund – Revenue:*

- There will be an increase in state revenue in FY23-24 of \$1,715,700 (\$500,000 + \$9,700 + \$1,206,000).
- There will be an increase in state revenue in FY24-25 of \$16,293,524 (\$600,000 + \$4,850 + \$14,331,924 + \$1,356,750).
- There will be an increase in state revenue in FY25-26 of \$23,308,737 (\$600,000 + \$4,850 + \$21,497,887 + \$1,206,000).
- There will be a recurring increase in state revenue in FY26-27 and subsequent years of \$30,474,698 (\$600,000 + \$4,850 + \$28,663,848 + \$1,206,000).

*General Fund – Expenditures:*

- There will be an increase in state expenditures in FY23-24 of \$1,495,149 (\$109,065 + \$1,386,084).
- There will be a recurring increase in state expenditures in FY24-25 and subsequent years of \$1,473,549 (\$107,865 + \$1,365,684).

*Secretary of State's Office:*

- There will be an increase in state revenue in FY23-24 of \$300.
- There will be a recurring increase in state revenue in FY24-25 and subsequent years of \$150.

*Tennessee Bureau of Investigation:*

- There will be an increase in state revenue in FY23-24 of \$18,575.
- There will be an increase in state expenditures in FY23-24 of \$11,950.
- There will be a recurring increase in state revenue in FY24-25 and subsequent years of \$9,288.
- There will be a recurring increase in state expenditures in FY24-25 and subsequent years of \$5,975.

*Incarceration:*

- There will be a decrease in state expenditures in FY23-24 of \$71,050.
- There will be a decrease in state expenditures in FY24-25 of \$143,500.
- There will a decrease in state expenditures in FY25-26 and subsequent years of \$144,900.

*Local Government:*

- There will be a mandatory decrease in local expenditures in FY23-24 and subsequent years of \$10,525,824.
- There will be a permissive increase in local revenue in FY24-25 of \$5,108,355.

- There will be a mandatory decrease in local expenditures in FY24-25 and subsequent years of \$21,051,647.
- There will be a permissive increase in local revenue in FY25-26 of \$7,662,531.
- A permissive increase in local revenue in FY26-27 and subsequent years of \$10,662,531.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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